

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

JAMES A. SIMPSON, :
Petitioner, :
v. : Case No. 3:12-cv-328
ED SHELDON, Warden, Toledo : JUDGE WALTER H. RICE
Correctional Institution, :
Respondent.

DECISION AND ENTRY ADOPTING UNITED STATES MAGISTRATE
JUDGE'S REPORT & RECOMMENDATIONS (DOC. #19) AND
SUPPLEMENTAL REPORT & RECOMMENDATIONS (DOC. #25) IN
THEIR ENTIRETY; OVERRULING PETITIONER'S OBJECTIONS (DOC.
#23); OVERRULING PETITIONER'S MOTION FOR RELIEF FROM
JUDGMENT/ORDER UNDER FED. R. CIV. P. 60(b) AND MOTION FOR
HEARING (DOC. #18); DENYING CERTIFICATE OF APPEALABILITY
AND LEAVE TO APPEAL *IN FORMA PAUPERIS*; CASE TO REMAIN
TERMINATED

On March 14, 2013, the Court dismissed Petitioner James A. Simpson's Petition for Writ of Habeas Corpus. Doc. #16. On May 28, 2014, Simpson filed a Motion for Relief from Judgment, and asked for a hearing. Doc. #18. He also appealed the Judgment to the Sixth Circuit Court of Appeals. Doc. #21. On May 30, 2014, United States Magistrate Judge Michael R. Merz issued a Report and Recommendations, Doc. #19, recommending that the Court overrule Simpson's Motion for Relief from Judgment as untimely. He further found that even if the motion were timely filed, it should be denied on the merits because the claims at

issue were, in fact, procedurally defaulted. He further recommended that the Court deny a certificate of appealability.

After Simpson filed Objections to the Report and Recommendations, Doc. #23, the Court recommitted the matter to Magistrate Judge Merz, Doc. #24. On July 29, 2014, Magistrate Judge Merz issued a Supplemental Report and Recommendations, Doc. #25, reaching the same conclusions he had before. Simpson has failed to file any Objections to the Supplemental Report and Recommendations within the time allotted. On August 18, 2014, the Sixth Circuit Court of Appeals dismissed Simpson's appeal as untimely. Doc. #26.

Based on the reasoning and citations of authority set forth by Magistrate Judge Merz, in his May 30, 2014, Report and Recommendations, Doc. #19, and his July 29, 2014, Supplemental Report and Recommendations, Doc. #25, as well as upon a thorough *de novo* review of this Court's file and the applicable law, this Court ADOPTS said judicial filings in their entirety. Petitioner's Motion for Relief from Judgment, and his request for a hearing, Doc. #18, are OVERRULED. The Court also OVERRULES his Objections to the Report and Recommendations, Doc. #23. The Magistrate Judge correctly found that the Motion for Relief from Judgment is untimely, and fails on the merits.

Given that Petitioner has not made a substantial showing of the denial of a constitutional right and, further, that the Court's decision herein would not be debatable among reasonable jurists, and because any appeal from this Court's

decision would be objectively frivolous, Petitioner is denied a certificate of appealability, and is denied leave to appeal *in forma pauperis*.

Judgment will be entered in favor of Respondent and against Petitioner.

The captioned case shall remain terminated upon the docket records of the United States District Court for the Southern District of Ohio, Western Division, at Dayton.

Date: August 22, 2014



WALTER H. RICE
UNITED STATES DISTRICT JUDGE